



**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 20, 2003
To: Ways & Means/Budget Committee
Referral to:

Subject: Classification of City Council Members and the Mayor as "Employees" for Purposes of the Minnesota Data Practice Act.

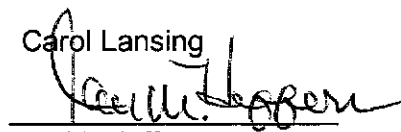
Recommendation: That the City Council approve the attached Resolution declaring that the City Council determines that its members and the Mayor are "employees" for purposes of classification of data under the Minnesota Data Practices Act.

Previous Directives: At its meeting of March 17, 2003, the Ways & Means/Budget Committee directed the City Attorney to request an opinion from the Commissioner of Administration on whether or not elected officials are employees for the purpose of Section 13.43 of the Minnesota Government Data Practices Act.

Prepared by: Carol Lansing

Phone: 673-2554

Approved by:


Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- ☒ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
☐ Action requires an appropriation increase to the Capital Budget
☐ Action requires an appropriation increase to the Operating Budget
☐ Action provides increased revenue for appropriation increase
☐ Action requires use of contingency or reserves
☐ Other financial impact (Explain):
☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Neighborhood Notification
City Goals:
Comprehensive Plan
Zoning Code
Other

Background/Supporting Information

On March 21, 2003, the City Council adopted, by ordinance, a new Ethics Code. As part of this Code, the City established the position of Ethics Officer, whose responsibilities include receiving complaints about alleged violations of the ethics ordinance by City officials and employees. The Ethics Code also creates an independent Ethical Practices Board to review ethics complaint against certain defined elected and appointed officials of the City and its affiliated boards and commissions.

During the course of the hearings preceding enactment of the new Ethics Code, a question arose whether ethics complaints about City Council members that may be filed with the Ethics Officer or the Ethical Practices Board would be treated as personnel data under Minnesota Statutes, § 13.43. Specifically, the City Council wanted to know whether Council members would be entitled to the protections of § 13.43, subd. 2(a)(4)(5) and subd. 5. Those subdivisions provide that data related to complaints about employees is private data, except that the following data is public: (1) the existence and status of a complaint; and (2) final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action.

After reviewing the Minnesota Government Data Practices Act (the Act), City Attorney Jay Heffern advised the Mayor's Ethics Task Force that he believed that the City Council members were subject to the protections of § 13.43 based on the following broad definition contained in subdivision 1 of that section for "personnel data":

Subdivision 1. **Definition.** As used in this section, "personnel data" means data on individuals collected because the individual is or was an employee of or applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a state agency, statewide system or political subdivision or is a member of or an applicant for an advisory board or commission.

Although this definition does not specifically reference elected officials, the definition is sufficiently broad to include City Council members, as well as the Mayor. Council members and the Mayor work for the City full-time and collect a salary. In addition, they are entitled to the City benefits and are treated as City employees.

However, in December 2002, the Minnesota Court of Appeals issued an opinion in Wegman v. Olmsted Soil & Water Conservation District, (Minn. Ct. App. No. C0-02-539, December 31, 2002) (unpublished), the reasoning of which, it could be argued, supports a conclusion that the City's elected officials are not "employees." Although the Wegman case is distinguishable because it dealt with the status of elected officials for purposes of the Minnesota Whistleblower Act, the Ways & Means/Budget Committee directed the City Attorney to request an opinion for the Commissioner of Administration on the issue of whether members of the Minneapolis City Council are employees for purposes of Minnesota Statutes, Chapter 13.

The Commissioner of Administration responded with the following opinion:

Chapter 13 does not contain a specific classification for data about elected officials. However, in previously-issued advisory opinions, the Commissioner consistently has opined that the classification of data about elected officials depends upon whether the entity considers the elected official to be an employee. If so, the data are classified pursuant to section 13.43. If not, the data are presumed public pursuant to the general presumption in section 13.03, subdivision 1.

Thus, the City Council has the discretion to make the determination regarding whether or not its members, as well as the Mayor, are "employees" for purposes of the data practices provisions of Minnesota Statutes, Chapter 13. It is my recommendation that the Council adopt the attached Resolution declaring that Council members and the Mayor are "employees." That action will result in treatment of data collected pursuant to a complaint to the City's Ethics Officer or Ethical Practices Board that is similar to how such data is treated

when complaints are made to the Minnesota Campaign Finance and Public Disclosure Board. Pursuant to Minnesota Statutes §10A.02, subd. 11, information and actions of that Board related to alleged violations of Chapter 10A are confidential other than a finding of probable cause or a conciliation agreement.